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TAMRA PAWLOSKI - 01/18/2019

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 -----x

4 FAIR ISAAC CORPORATION, a Delaware
corporation,

5 Plaintiff,

6 Case No. 16-cv-1054

7 v.

8 FEDERAL INSURANCE COMPANY, an
Indiana corporation, and ACE

9 AMERICAN INSURANCE COMPANY, a
Pennsylvania corporation,

10 Defendants.

11 -----x

12 8:30 a.m.
January 18, 2019

13 767 Third Avenue
14 New York, New York

15 * CONFIDENTIAL *

16 DEPOSITION of TAMRA PAWLOSKI, a Plaintiff

17 in the above entitled matter, pursuant to Notice,

18 before Stephen J. Moore, a Registered Professional

19 Reporter, Certified Realtime Reporter and Notary

20 Public of the State of New York.

21

22 Job No. MP-204293

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Pages 178..181

<p style="text-align: right;">Page 178</p> <p>1 Q And you understood at this time</p> <p>2 that the pricing you were seeing was based on</p> <p>3 the estimated U.S. revenue of the new company,</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q Not that you agreed with the</p> <p>7 pricing, just that that's what the new U.S.</p> <p>8 revenue was the basis for the pricing from</p> <p>9 FICO's perspective?</p> <p>10 A Correct.</p> <p>11 Q And Chubb rejected this offer,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q And why was that?</p> <p>15 MR. FLEMING: I'm going to object</p> <p>16 to the extent it requires disclosure of</p> <p>17 its attorney-client communications.</p> <p>18 On the basis of privilege you</p> <p>19 should not disclose those.</p> <p>20 A Can you ask your question again?</p> <p>21 Q Sure.</p> <p>22 Why did Chubb reject this offer?</p>	<p style="text-align: right;">Page 180</p> <p>1 her prior testimony, and it's multiple</p> <p>2 questions.</p> <p>3 A Can you repeat that again?</p> <p>4 Q Sure, I will try.</p> <p>5 Chubb rejected this offer in</p> <p>6 Exhibit 259, correct?</p> <p>7 A Yes.</p> <p>8 Q And the reason Chubb rejected</p> <p>9 this offer is -- well, I will ask it a</p> <p>10 different way.</p> <p>11 Was the reason Chubb rejected</p> <p>12 this offer because FICO bases its licensing</p> <p>13 figures on company revenue?</p> <p>14 A No.</p> <p>15 Q So the problem with this offer</p> <p>16 wasn't -- wasn't FICO's pricing models, it was</p> <p>17 instead the history between the parties and</p> <p>18 because Chubb thought it had already had a</p> <p>19 license, right?</p> <p>20 MR. FLEMING: Objection, multiple</p> <p>21 questions and misstates her prior</p> <p>22 testimony.</p>
<p style="text-align: right;">Page 179</p> <p>1 A Because once again, senior</p> <p>2 leadership felt that this was -- this license</p> <p>3 fee was still extremely high in comparison to</p> <p>4 the investment already made with FICO.</p> <p>5 Q Did you believe that -- well,</p> <p>6 Chubb's position in these business</p> <p>7 negotiations, it was not that -- Chubb didn't</p> <p>8 think it needed to pay a new license fee at</p> <p>9 all, did it?</p> <p>10 MR. FLEMING: I object to the</p> <p>11 extent it calls for attorney-client</p> <p>12 communications, which you should not</p> <p>13 disclose on the basis of privilege.</p> <p>14 A No, we didn't. We had a hard</p> <p>15 time with that.</p> <p>16 Q So the issue wasn't -- the</p> <p>17 problem from the business perspective from</p> <p>18 Chubb's point of view wasn't that FICO's</p> <p>19 pricing model was flawed, rather that Chubb</p> <p>20 already had a license and shouldn't be forced</p> <p>21 to pay more, correct?</p> <p>22 MR. FLEMING: I object, misstates</p>	<p style="text-align: right;">Page 181</p> <p>1 A No, there was -- we still had an</p> <p>2 issue with this pricing model.</p> <p>3 Q Chubb had a problem with the</p> <p>4 ultimate price, not necessarily the model,</p> <p>5 correct?</p> <p>6 MR. FLEMING: Objection, that's</p> <p>7 been asked and answered.</p> <p>8 A No, we had a problem with the</p> <p>9 model as well.</p> <p>10 Q Can you tell me what the problem</p> <p>11 with the model was?</p> <p>12 MR. FLEMING: I object to the</p> <p>13 extent it calls for attorney-client</p> <p>14 privileged communications.</p> <p>15 A If you take a look at the global</p> <p>16 revenue, it's \$14 billion at an estimate of \$11</p> <p>17 billion for \$2.4 million.</p> <p>18 In 2016 it was 20, but yet we</p> <p>19 were asked to pay double if not triple what we</p> <p>20 were paying from when we originally purchased.</p> <p>21 So, the calculation of how they</p> <p>22 came to 20, that was not disclosed, just that</p>

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<p style="text-align: right;">Page 182</p> <p>1 the revenue was the basis.</p> <p>2 Q I am handing you what's been</p> <p>3 marked as Exhibit 260.</p> <p>4 (The above described document was</p> <p>5 marked Exhibit 260 for identification as</p> <p>6 of this date.)</p> <p>7 Q Are you familiar with this</p> <p>8 e-mail?</p> <p>9 A Yes.</p> <p>10 Q In this e-mail, Henry -- you</p> <p>11 e-mailed Henry Mirolyuz on March 14, 2016,</p> <p>12 "Henry, have any proof that FICO knew we</p> <p>13 deployed Blaze Advisor internationally?"</p> <p>14 Why did you ask Henry that</p> <p>15 question?</p> <p>16 A That was based upon</p> <p>17 attorney-client privilege.</p> <p>18 Q And what was Mr. Mirolyuz'</p> <p>19 answer?</p> <p>20 A I don't recall, actually.</p> <p>21 MR. FLEMING: To be clear, you</p> <p>22 are asking her why she asked the</p>	<p style="text-align: right;">Page 184</p> <p>1 Q In what way?</p> <p>2 A So, in 2011 I was part of a</p> <p>3 negotiation with the SOW on work where FICO</p> <p>4 were sending two employees over to assist us</p> <p>5 with an assessment and implementation of Blaze</p> <p>6 in our London office.</p> <p>7 And so that was the first time</p> <p>8 I've had discussions with FICO on the</p> <p>9 international part.</p> <p>10 Because we, as the other SOWs</p> <p>11 that we had gone through, same thing, I had to</p> <p>12 look at the requirements and all of that from</p> <p>13 that perspective.</p> <p>14 And then the next time we</p> <p>15 brought it up was during the discussions of</p> <p>16 what products were using Blaze, after the</p> <p>17 February 2016 letter.</p> <p>18 Q And the February 2016 letter you</p> <p>19 are referring to is from whom to whom?</p> <p>20 A There was a letter to our</p> <p>21 general counsel, the general counsel at ACE,</p> <p>22 and documenting, and I can't remember the</p>
<p style="text-align: right;">Page 183</p> <p>1 question, not whether she had knowledge</p> <p>2 of FICO deploying Blaze internationally,</p> <p>3 correct?</p> <p>4 MS. KLIEBENSTEIN: Correct, and</p> <p>5 then --</p> <p>6 Q Was there any response from</p> <p>7 Mr. Mirolyuz?</p> <p>8 A We had several discussions on</p> <p>9 several points with FICO, and I don't recall</p> <p>10 this specific -- his specific response to this.</p> <p>11 Q And you asked him this question</p> <p>12 because legal asked you to ask him this</p> <p>13 question?</p> <p>14 A Correct.</p> <p>15 Q So you didn't ask him this</p> <p>16 question for purposes of the business</p> <p>17 negotiations that were going on?</p> <p>18 A No.</p> <p>19 Q When you were talking with FICO</p> <p>20 personnel, did international use of Blaze</p> <p>21 Advisor ever come up?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 185</p> <p>1 specifics.</p> <p>2 Q I am handing you what has been</p> <p>3 marked as Exhibit 261.</p> <p>4 (The above described document was</p> <p>5 marked Exhibit 261 for identification, as</p> <p>6 of this date.)</p> <p>7 Q Are you familiar with this</p> <p>8 e-mail and its attachment?</p> <p>9 A I am.</p> <p>10 Q Was this your response to the</p> <p>11 FICO offer in Exhibit 259?</p> <p>12 A Yes.</p> <p>13 Q To be clear, it's the attachment</p> <p>14 that's Chubb's response?</p> <p>15 A That's correct.</p> <p>16 Q Okay, now let's move to the</p> <p>17 attachment.</p> <p>18 Can you walk me through the</p> <p>19 different rows and columns to explain the</p> <p>20 methodology used by Chubb in this response?</p> <p>21 Let me ask a predicate question.</p> <p>22 A Sure.</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q You were responding to the</p> <p>2 option 1 offer, correct, not the option 2</p> <p>3 offer?</p> <p>4 A That's correct.</p> <p>5 Q So this was responding to option</p> <p>6 1 for a North American enterprise license,</p> <p>7 correct?</p> <p>8 A This was our response to an</p> <p>9 enterprise license.</p> <p>10 Q Restricted geographically at</p> <p>11 all?</p> <p>12 A We incorporated in the two</p> <p>13 non-U.S. deployments, so it did open it up from</p> <p>14 just in North America.</p> <p>15 Q Okay, but the proposal on the</p> <p>16 table was a -- that's being discussed in</p> <p>17 Exhibit 261 is enterprise for the U.S. and two</p> <p>18 non-U.S. deployments?</p> <p>19 A Yes, it is in response to option</p> <p>20 number 1 of 557, Exhibit 557.</p> <p>21 Q Just so we're clear, deployment</p> <p>22 in this context, that word means the same as we</p>	<p style="text-align: right;">Page 188</p> <p>1 revised numbers based upon the change from 11.2</p> <p>2 to 9.56, and that's what the \$2 million</p> <p>3 represents.</p> <p>4 Likewise for deployment; took</p> <p>5 the same methodology, and therefore kind of</p> <p>6 went down and used that same.</p> <p>7 Now all you're doing is adding</p> <p>8 the two, so the 2, 3 and then the discount that</p> <p>9 was applied gave us the total of 1.2, and so</p> <p>10 therefore we overpaid our license, the original</p> <p>11 license when we originally purchased it, back</p> <p>12 in 2006 based upon this.</p> <p>13 Because -- well -- and so there</p> <p>14 should have -- and then we overpaid the license</p> <p>15 as well as overpaid the maintenance.</p> <p>16 Q Let me ask you a couple of</p> <p>17 questions on that.</p> <p>18 A Sure.</p> <p>19 Q So U.S. revenue went -- what</p> <p>20 FICO used in the 2006 negotiations was \$11.2</p> <p>21 billion?</p> <p>22 A Correct.</p>
<p style="text-align: right;">Page 187</p> <p>1 discussed before?</p> <p>2 A It does.</p> <p>3 Q Okay, now we are ready. Walk me</p> <p>4 through the Chubb counteroffer.</p> <p>5 A There were several individuals</p> <p>6 who had input into this, so although I</p> <p>7 responded to Bill Waid, so I will walk through</p> <p>8 it as I can recall, as best as I can recall.</p> <p>9 So we took a look at what the</p> <p>10 revised numbers were for 2006, because when we</p> <p>11 looked at the 2006 numbers that were initially</p> <p>12 here, those numbers were actually the current</p> <p>13 before the acquisition.</p> <p>14 They weren't actually the 2006</p> <p>15 revenue or gross and premium numbers, so that's</p> <p>16 what the revised numbers up above were for.</p> <p>17 And so we went back to validate</p> <p>18 what that was, and that's why you'll see the</p> <p>19 difference from a -- so the first three lines</p> <p>20 represents the estimated U.S. revenues versus</p> <p>21 what FICO had, okay?</p> <p>22 Then second, we went down to the</p>	<p style="text-align: right;">Page 189</p> <p>1 Q And then the revised numbers,</p> <p>2 you went back and looked at the actuals, and it</p> <p>3 was \$9.56 billion?</p> <p>4 A Yes.</p> <p>5 Q And so when you go down to</p> <p>6 deployment and development, you shrank those</p> <p>7 numbers by the same percentage? Am I</p> <p>8 understanding that right?</p> <p>9 A The allocated percent, like a</p> <p>10 formula.</p> <p>11 Q So essentially 9.56 is about</p> <p>12 8/10 of 11.2, right, so the deployment number</p> <p>13 that you provided went down by that same</p> <p>14 percentage?</p> <p>15 A Right.</p> <p>16 Q So that's how that was.</p> <p>17 The development figure, that</p> <p>18 also went down by the same percentage, correct?</p> <p>19 A That's correct.</p> <p>20 Q And then the overpayment of</p> <p>21 maintenance, how was that calculated?</p> <p>22 A Because we currently -- we had</p>

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<p style="text-align: right;">Page 230</p> <p>1 3:35 p.m. and we are going off the</p> <p>2 record.</p> <p>3 (At this point in the proceedings</p> <p>4 there was a recess, after which the</p> <p>5 deposition continued as follows:)</p> <p>6 THE VIDEOGRAPHER: This is the</p> <p>7 start of media labeled number 6. The</p> <p>8 time now is 3:43 p.m. and we are back on</p> <p>9 the record.</p> <p>10 Q So, you mentioned a few times</p> <p>11 that after February or March of 2016 in the</p> <p>12 negotiations with FICO that it went up the</p> <p>13 chain to senior leadership.</p> <p>14 Who were the people that you are</p> <p>15 referring to in that senior leadership group?</p> <p>16 A Bill Harlam, Rob Hilgan, Kevin</p> <p>17 Shirran and Andrew Hopp.</p> <p>18 Q Andrew Hopp is the general</p> <p>19 counsel, is that correct?</p> <p>20 A That's correct.</p> <p>21 Q Bill Harlam was the CIO?</p> <p>22 A No, Bill was my boss, he was the</p>	<p style="text-align: right;">Page 232</p> <p>1 discussed relating to Australia with Russ</p> <p>2 Hodey.</p> <p>3 Were those the e-mails at</p> <p>4 Exhibits 268 and 269?</p> <p>5 A No, they were the ones in an</p> <p>6 earlier, that we did -- hold on a second, I</p> <p>7 think it was Exhibit 244.</p> <p>8 And what is he asking? Not 244,</p> <p>9 I'm sorry. It was 241 and 243.</p> <p>10 Q So I note your -- in Exhibit 241</p> <p>11 your response was that the license was not</p> <p>12 worldwide, correct?</p> <p>13 A Yes, but then shortly after, as</p> <p>14 stated, that was corrected.</p> <p>15 Q An it was corrected by Mark?</p> <p>16 A Berthume.</p> <p>17 MS. KLIEBENSTEIN: All right. No</p> <p>18 further questions.</p> <p>19 MR. FLEMING: I have just a</p> <p>20 couple of follow-up relating to Exhibit</p> <p>21 260.</p> <p>22</p>
<p style="text-align: right;">Page 231</p> <p>1 head of vendor management.</p> <p>2 Q Who is Rob Hilgan?</p> <p>3 A Rob Hilgan was Bill's boss.</p> <p>4 Q What was his role?</p> <p>5 A Operations.</p> <p>6 Q Chief of operations?</p> <p>7 A Yeah -- no, he wasn't the Chief</p> <p>8 Operating Officer, he just had IT operations.</p> <p>9 Q And Kevin Shirran, who was that</p> <p>10 and what was his role?</p> <p>11 A Officially our CIO, global CIO.</p> <p>12 Q Now, when we were looking at</p> <p>13 Exhibit -- the very last exhibit with the CHear</p> <p>14 report, we were talking about the Blaze Advisor</p> <p>15 being approved for use in Evolution and Russ</p> <p>16 Hodey was the IT application contact.</p> <p>17 Do you recall that?</p> <p>18 A Yes.</p> <p>19 I'm sorry, here we go.</p> <p>20 Q I wanted to cross-reference that</p> <p>21 to other exhibits. You mentioned that it</p> <p>22 probably related to the e-mails we had already</p>	<p style="text-align: right;">Page 233</p> <p>1 EXAMINATION BY</p> <p>2 MR. FLEMING:</p> <p>3</p> <p>4 Q My question --</p> <p>5 MS. KLIEBENSTEIN: Hold on just a</p> <p>6 second. Let me see 260, please.</p> <p>7 Q What knowledge do you have that</p> <p>8 FICO knew that Chubb deployed Blaze in the</p> <p>9 United Kingdom?</p> <p>10 A I worked on a statement of work</p> <p>11 with -- where two of the consultants from FICO</p> <p>12 were sent to the U.K. to install and to do an</p> <p>13 assessment and then an installation of the FICO</p> <p>14 product, Blaze product.</p> <p>15 Q And who prepared the statement</p> <p>16 of work?</p> <p>17 A It was joint between the</p> <p>18 business partner, myself and FICO.</p> <p>19 Q And who at FICO was working on</p> <p>20 this?</p> <p>21 A I know it wasn't Mike Sawyer,</p> <p>22 because he wasn't there at the time, I don't</p>

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<p style="text-align: right;">Page 234</p> <p>1 believe.</p> <p>2 I don't recall who the -- one of</p> <p>3 the salesmen.</p> <p>4 Q Is it Russ Schreiber?</p> <p>5 A Yes.</p> <p>6 Q Did you have any discussions</p> <p>7 with Russ Schreiber as to whether use of Blaze</p> <p>8 by Chubb in the United Kingdom was permissible</p> <p>9 under the agreement?</p> <p>10 A No, because I wouldn't have</p> <p>11 thought they would send consultants there if it</p> <p>12 was not permissible.</p> <p>13 Q So if you just walk through the</p> <p>14 process of why there was a statement of work</p> <p>15 and how that was proposed, just the timeline.</p> <p>16 A So, what will happen is we will</p> <p>17 get a request from the business asking us if --</p> <p>18 to put together the SOW.</p> <p>19 I would contact FICO to arrange</p> <p>20 that, and it is practice at Chubb that the</p> <p>21 business also contacts FICO to go over what</p> <p>22 their requirements are so the two of them can</p>	<p style="text-align: right;">Page 236</p> <p>1 wanted to make sure that we were putting FICO</p> <p>2 in correctly, so, the assessment and</p> <p>3 installation.</p> <p>4 Q And what was your understanding</p> <p>5 as to what they installed?</p> <p>6 A It was clear that was -- it was</p> <p>7 the Blaze Advisor product.</p> <p>8 Q Where was it installed?</p> <p>9 A In the U.K. data center on, I</p> <p>10 believe our mainframe in the U.K.</p> <p>11 Q At any point during that process</p> <p>12 did anybody from FICO suggest that the use or</p> <p>13 installation of Blaze in the United Kingdom was</p> <p>14 outside the scope of the sales force license</p> <p>15 agreement?</p> <p>16 A No.</p> <p>17 MR. FLEMING: Okay, I have no</p> <p>18 further questions.</p> <p>19</p> <p>20 CONTINUED EXAMINATION BY</p> <p>21 MS. KLIEBENSTEIN:</p> <p>22</p>
<p style="text-align: right;">Page 235</p> <p>1 agree.</p> <p>2 I'm on some of those calls and</p> <p>3 not on some of those calls.</p> <p>4 Then what we do is we take what</p> <p>5 has been agreed and put it into a statement of</p> <p>6 work and ensure that statement of work is</p> <p>7 correct, including what's going to be delivered</p> <p>8 and the deliverables, and from there it gets</p> <p>9 signed.</p> <p>10 Q And then what happens next?</p> <p>11 A Then the SOW goes to the</p> <p>12 business partner for them to work on, so they</p> <p>13 contact FICO and the consultants go to wherever</p> <p>14 they need to go.</p> <p>15 Q And did you understand that two</p> <p>16 FICO representatives went to London?</p> <p>17 A Yes, that was outlined in the</p> <p>18 SOW.</p> <p>19 Q And what was your understanding</p> <p>20 of what did they do in London?</p> <p>21 A They were the architects that</p> <p>22 helped with the assessment, and then also we</p>	<p style="text-align: right;">Page 237</p> <p>1 Q So the event you were just</p> <p>2 talking about, when did this occur?</p> <p>3 A 2011, yes, 2011 or 2012; I</p> <p>4 believe it was 2011.</p> <p>5 Q Were you in the United</p> <p>6 Kingdom --</p> <p>7 A No.</p> <p>8 Q -- when the work was being done?</p> <p>9 A No.</p> <p>10 Q So when you are talking about</p> <p>11 the installation and the assessment, you</p> <p>12 weren't personally there?</p> <p>13 A No, that was managed by the</p> <p>14 business.</p> <p>15 Q And how did you come across that</p> <p>16 knowledge?</p> <p>17 A In the statement of work that</p> <p>18 was signed off by two -- by both companies as</p> <p>19 to what was going to be delivered, and then</p> <p>20 before payment, I validated that it happened.</p> <p>21 Q So these were tasks that were</p> <p>22 outlined in the statement of work?</p>

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Page 238			Page 240		
1	A	Correct.	1	involve?	
2	Q	A written statement of work?	2	A	This one was a CPI print
3	A	Yes.	3		application.
4	Q	Do you know if that statement of	4	Q	That's the name for it?
5		work has been produced in this lawsuit?	5	A	Yes, I believe that was -- I
6	A	I don't know.	6		knew it had to do something with print.
7		I know it wasn't one of the ones	7	Q	Do you know one way or the other
8		that you have shown me.	8		whether Blaze Advisor was installed on servers
9	Q	Did anyone from Chubb & Sons	9		in the United Kingdom pursuant to this
10		check with legal to make sure that what was	10		statement of work?
11		going to happen -- well, was the SOW Chubb &	11	A	Yes.
12		Sons' standard SOW?	12		Yes, it was installed, because
13	A	It was.	13		they gave me validation when we were paying the
14	Q	So it wouldn't have gone to	14		invoice.
15		Chubb & Sons' legal?	15	Q	What was that validation?
16	A	That's correct.	16	A	That the deliverables outlined
17	Q	Do you know whether it went	17		in that SOW were completed.
18		through FICO's legal department?	18	Q	Who gave that you validation?
19	A	I do not know.	19	A	The project manager.
20	Q	Do you know if Mr. Schreiber	20	Q	And who is the project manager?
21		checked with FICO legal?	21	A	I don't remember.
22	A	I do not, no.	22		MS. KLIEBENSTEIN: All right, I
Page 239			Page 241		
1	Q	You mentioned briefly you don't	1		don't have any further questions.
2		recall any discussions with respect to this	2		MR. FLEMING: Nothing further.
3		statement of work as to whether it was okay	3		We will read and sign.
4		under the agreement, correct?	4		THE VIDEOGRAPHER: The time is
5	A	Yeah, I don't recall.	5		3:58 p.m. and we are going off the
6	Q	But there weren't -- you don't	6		record.
7		recall discussions one way or the other,	7		
8		whether this was or was not okay?	8		
9	A	That's correct, I don't recall.	9		
10	Q	And so what was your role with	10		
11		respect to this statement of work?	11		
12	A	I helped to draft it on to the	12		
13		template and work it through the process that	13		
14		we have outlined, that I have outlined a couple	14		
15		of times already.	15		
16		So, getting it through to	16		
17		signature, making sure everybody was agreed	17		
18		with what the business terms were in the SOW,	18		
19		agree with the pricing, and got a final	19		
20		signature approval for it.	20		
21	Q	And what application -- what	21		
22		software application did the statement of work	22		